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HOUSE BILL NO. 745
Offered January 10, 2024
Prefiled January 9, 2024

A *BILL* to amend the Code of Virginia by adding in Chapter 14 of Title 10.1 an article numbered 3.8, consisting of sections numbered 10.1-1425.40 through 10.1-1425.46, relating to mattress stewardship program established; civil penalty.

Patrons—Laufer and Clark; Senator: Deeds

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 14 of Title 10.1 an article numbered 3.8, consisting of sections numbered 10.1-1425.40 through 10.1-1425.46, as follows:

Article 3.8.

Mattress Stewardship Program.

§ 10.1-1425.40. Definitions.

As used in this article, unless the context requires a different meaning:

"Mattress" means a resilient material or combination of materials that is enclosed by a ticking, is used alone or in combination with other products, and is intended for or promoted for sleeping on. "Mattress" includes box springs and any used or renovated materials. "Mattress" does not include:

- 1. An unattached mattress pad or topper that is designed to be used on top of or in addition to a mattress;*
- 2. A waterbed, air mattress, or any other product that contains liquid-filled or gas-filled ticking and that does not contain upholstery material between the ticking and the mattress core;*
- 3. A carriage, basket, dressing table, stroller, playpen, infant carrier, lounge pad, crib bumper, crib mattress, bassinet mattress, or any other product manufactured for young children; or*
- 4. A sleeping bag, pillow, futon, sleeper sofa, fold-out sofa bed, mattress foundation, car bed, or any furniture that otherwise does not contain a detachable mattress.*

"Mattress core" means the principal support system that is present in a mattress, including springs, foam, an air bladder, a water bladder, or resilient filling.

"Mattress stewardship assessment" means the amount added to the purchase price of each mattress sold in the Commonwealth that is necessary to cover the mattress stewardship program's cost of collecting, transporting, and processing postconsumer mattresses within the Commonwealth.

"Mattress stewardship program" means the program to collect postconsumer mattresses established in § 10.1-1425.42.

"Mattress waste management entity" means a municipal, private, or nonprofit waste management entity authorized or contracted by the mattress stewardship program to collect, disaggregate, reduce, reuse, and recycle mattresses.

"Postconsumer mattress" means a mattress no longer wanted by a user. "Postconsumer mattress" includes any unused mattress and any mattress that has been used and abandoned or discarded.

"Producer" means (i) a manufacturer of a mattress that sells, offers for sale, or distributes mattresses in the Commonwealth under the producer's own name or brand or (ii) an individual that imports mattresses into the Commonwealth to sell, offer for sale, or distribute in the Commonwealth. "Producer" includes the owner of a mattress trademark or brand.

"Renovate" means to alter a discarded mattress for resale through replacing the ticking or filling, adding additional filling, or replacing components of the discarded mattress with new or recycled materials. "Renovate" does not include (i) stripping a discarded mattress of the ticking or filling without adding new material or (ii) the sanitization or sterilization of a discarded mattress without other alteration to the discarded mattress.

"Representative organization" means a nonprofit organization created by producers to implement a mattress stewardship program.

"Retailer" means any person that offers mattresses for sale at retail in the Commonwealth.

"Sale" or "sell" means any transfer of title for consideration, including remote sales conducted through sales outlets, catalogues, or the Internet or any other similar electronic means.

"Sanitization" means the direct application of chemicals to a mattress to kill pathogens that cause human disease.

"Sterilization" means the mitigation of any deleterious substances or organisms, including pathogens that cause human disease, fungi, and insects, from a mattress or filling using a chemical or heat process.

§ 10.1-1425.41. Disposal of mattresses in landfills prohibited.

59 A. Beginning January 1, 2028, no person shall dispose of a mattress in a landfill, unless such mattress is
60 deeply contaminated and cannot be renovated and no parts of such mattress can be recycled.

61 B. Beginning January 1, 2028, no person shall dispose of a mattress in an incinerator.

62 **§ 10.1-1425.42. Mattress stewardship program.**

63 A. Beginning July 1, 2025, producers of mattresses sold at retail in the Commonwealth, or a
64 representative organization acting on a producer's behalf, shall submit a plan for the establishment of a
65 mattress stewardship program to the Department for approval. Such plan shall:

66 1. Identify the materials, entities, and responsible parties covered under the plan;

67 2. Describe the organizational structure of any representative organization;

68 3. Describe the financing method for the plan, including how fees will be structured and collected;

69 4. Describe sound management practices that will be used for worker health and safety;

70 5. Describe how discarded mattresses not covered under the program will be handled;

71 6. Describe how producers will:

72 a. Work with existing recycling programs and infrastructure;

73 b. Consult with state and local governments and other stakeholders; and

74 c. Conduct research as needed to improve the collection and recycling of mattresses;

75 7. Describe how mattress waste management entities will be solicited, recruited, and supported,
76 including:

77 a. Existing municipal, private, and nonprofit entities in the Commonwealth that work in the mattress
78 waste stream management field;

79 b. Existing entities in the Commonwealth that work in the general waste management field;

80 c. Entities that have experience in or prioritize disaggregation, reuse, and recycling of component
81 mattress parts;

82 d. Minority business enterprises;

83 e. Minority-owned businesses that are not designated as minority business enterprises;

84 f. Woman-owned businesses;

85 g. Veteran-owned businesses; and

86 h. Businesses that prioritize the training and hiring of individuals who are (i) reentering society after
87 imprisonment, (ii) experiencing homelessness and housing insecurity, (iii) in addiction recovery, (iv)
88 disabled, or (v) otherwise socioeconomically or historically marginalized or disadvantaged;

89 8. Provide an estimated annual operating budget;

90 9. Provide a plan for market development;

91 10. Provide the time frame for achieving zero-waste goals and program profitability and sustainability
92 without the need for fees by:

93 a. Encouraging the expansion and development of downstream markets for disaggregated component
94 mattress parts;

95 b. Increasing the efficiency of end-of-life product management; and

96 c. Encouraging effective coordination and sharing of resources where possible; and

97 11. Provide a plan in case of closure of the program.

98 B. The plan pursuant to subsection A shall minimize public sector involvement in, and financial
99 responsibility for, the management of mattress disposal by (i) promoting mattress reuse and recycling and (ii)
100 negotiating and executing agreements to collect, transport, reuse, recycle, and dispose of mattresses and
101 process mattresses for materials recovery.

102 C. The plan pursuant to subsection A shall provide for the convenient and available collection of
103 mattresses in the Commonwealth by:

104 1. Providing for convenient and free access to collection or drop-off locations for mattresses from
105 residential, commercial, institutional, or other sources;

106 2. Providing a convenient method for the public to access a list of collection or drop-off locations;

107 3. Identifying each producer participating in the mattress stewardship program and the brands of
108 mattresses sold in the Commonwealth that are covered by the program;

109 4. Providing geographic modeling to determine the number and distribution of sites for all collection of
110 postconsumer mattresses based on the following criteria:

111 a. At least 90 percent of the residents of the Commonwealth shall have a collection site within a 15-mile
112 radius; and

113 b. Unless otherwise approved by the Department, one additional collection site shall be established for
114 every 50,000 residents of a geographical area designated under federal law as an urbanized area;

115 5. Providing information on how mattresses contaminated by biological fluids, toxins, or infectious agents
116 will be disposed of, including whether such disposal will be handled inside or outside of the Commonwealth;
117 and

118 6. Allowing for the scheduling and pickup of mattresses from private property.

119 D. The plan pursuant to subsection A may identify a retailer as a postconsumer mattress collection site if:

120 1. Such retailer volunteers to act as a postconsumer mattress collection site;

- 121 2. Such retailer is in compliance with all applicable laws and regulations; and
 122 3. The site location of such retailer is consistent with maintaining a convenient and available network of
 123 postconsumer mattress collection locations.
- 124 E. The plan pursuant to subsection A shall include:
- 125 1. A uniform mattress stewardship assessment for all mattresses sold in the Commonwealth and a
 126 mechanism for producers participating in a mattress stewardship program to remit to the representative
 127 organization payment of the mattress stewardship assessment for each mattress sold in the Commonwealth;
 128 and
- 129 2. Performance goals for:
- 130 a. The collection rates of discarded mattresses;
- 131 b. The recycling rates of discarded mattresses, including closed-loop recycling;
- 132 c. The renovation rates of discarded mattresses;
- 133 d. The number of illegally dumped mattresses and the share of illegally dumped mattresses as a
 134 percentage of all mattresses in the mattress stewardship program; and
- 135 e. Public awareness of the mattress stewardship program.
- 136 F. Each plan submitted pursuant to subsection A (i) shall be reevaluated by the Department every five
 137 years and (ii) may, if required by the Department, be revised before the end of such five-year time period if
 138 targets are not being met or a change in circumstances warrants a revision.
- 139 G. The total amount of the mattress stewardship assessment established in subsection E shall not exceed
 140 the costs of implementing the mattress stewardship program.
- 141 H. The mattress stewardship assessment established in subsection E shall be evaluated by an independent
 142 financial auditor, as designated by the Department, to ensure that the costs of implementing the mattress
 143 stewardship program are covered but not exceeded. The cost of such evaluation performed by an independent
 144 financial auditor shall be funded by the mattress stewardship program. Mattress stewardship assessments
 145 shall be (i) used only to implement the mattress stewardship program and (ii) phased out when the mattress
 146 stewardship program becomes profitable based on any products it produces from the recycled material.
- 147 I. The Department shall review (i) the mattress stewardship program plan required by subsection A and
 148 (ii) the work product of the independent financial auditor designated by the Department pursuant to
 149 subsection H to evaluate mattress stewardship assessments.
- 150 J. The producer or representative organization that submits a plan for approval shall pay a plan review
 151 fee to the Department that covers the Department's cost of plan review, including associated costs for
 152 mattress stewardship program compliance oversight, as determined by the Department.
- 153 K. The Department shall (i) approve a mattress stewardship program if the Department determines that
 154 the mattress stewardship program plan, including the mattress stewardship assessment, complies with the
 155 requirements of subsection A and (ii) list on its website the producers and brands implementing or
 156 participating in an approved mattress stewardship program.
- 157 L. A producer or representative organization shall implement its mattress stewardship program plan
 158 within one year after the plan's approval by the Department. Beginning one year after a producer's or
 159 representative organization's plan is approved:
- 160 1. No producer or retailer shall sell or offer for sale a brand of mattress to any person in the
 161 Commonwealth unless such producer of the brand or a representative organization of which the producer is
 162 a member is implementing an approved mattress stewardship program;
- 163 2. A producer shall add the mattress stewardship assessment established under an approved mattress
 164 stewardship program to the cost of all mattresses sold to retailers in the Commonwealth; and
- 165 3. Each retailer shall add a mattress stewardship assessment to the purchase price of all mattresses sold
 166 in the Commonwealth by displaying a line item on the receipt for the added cost.
- 167 M. A producer or representative organization participating in an approved mattress stewardship program
 168 shall provide consumers with educational materials regarding such program that include (i) information
 169 regarding available end-of-life management options for mattresses offered through such program and (ii)
 170 information that notifies consumers that an assessment to cover the costs of implementing such program is
 171 included in the purchase price of all mattresses sold in the Commonwealth. Following the implementation of
 172 the mattress stewardship program, a retailer shall provide consumers, at the point of retail sale, with
 173 educational materials provided by a producer or representative organization on available collection
 174 opportunities for postconsumer mattresses through such program.
- 175 N. Following the implementation of the mattress stewardship program, a retailer shall be considered
 176 compliant with the requirements of this section if, on the date a mattress is ordered from the producer, the
 177 producer of such mattress is listed on the Department's website as implementing or participating in an
 178 approved mattress stewardship program.
- 179 O. No postconsumer mattress collection site that is identified in a mattress stewardship program plan
 180 shall charge any additional fee for the disposal of mattresses when mattresses are offered for disposal, reuse,
 181 or recycling.
- 182 P. A producer or representative organization that organizes the collection, transportation, and processing

183 of mattresses in accordance with an approved mattress stewardship program shall be immune from liability
184 for any claim of a violation of antitrust, restraint of trade, or unfair trade practice arising from conduct
185 undertaken in accordance with such program.

186 **§ 10.1-1425.43. Annual reporting requirements.**

187 A. Beginning March 1, 2027, or one year after approval of a mattress stewardship program plan by the
188 Department, whichever is later, and annually thereafter, the producer or representative organization shall
189 submit to the Department and publish online a report that details its mattress stewardship program,
190 including:

191 1. A description of the methods used to collect, transport, and process mattresses in the Commonwealth;

192 2. The volume and type of mattresses collected in the Commonwealth sorted by the type of collection site;

193 3. The volume and type of mattresses collected in the Commonwealth by methods of disposition, including
194 reuse, recycling, and other methods of processing or disposal, which includes an accounting of the volume of
195 mattresses collected in the Commonwealth for each locality;

196 4. The total cost of implementing and administering such mattress stewardship program, as determined by
197 an independent financial audit funded by the mattress stewardship assessment;

198 5. Samples of educational materials used to inform consumers of mattress disposal, a summary of public
199 education efforts, and an evaluation of the effectiveness of such educational materials and public education
200 efforts;

201 6. An evaluation of why unrecycled mattresses were not recycled;

202 7. The total number of mattresses sold to consumers in the Commonwealth in the previous year;

203 8. Strategies to address postconsumer and discarded mattresses that were not included in such program
204 and that were illegally dumped;

205 9. Reports on research activities and pilot programs;

206 10. A discussion of any changes in mattress design;

207 11. The number of postconsumer mattresses received through collection that were not included in such
208 program;

209 12. The number of postconsumer mattresses that were illegally dumped, as reported to the Department;

210 13. An analysis of how the data required by this subsection has changed over time;

211 14. An evaluation of the effectiveness of methods and processes used to achieve the goals of such
212 program, including information on progress made toward achieving such goals, an explanation of why any
213 goals were not met during the previous calendar year, and information on any efforts that will be taken to
214 improve progress toward meeting such goals in the future, if applicable;

215 15. Recommendations for any changes to such program, including information relevant to compliance
216 with the plan; and

217 16. Any other information required by the Department.

218 B. The producer or representative organization that submits an annual report required under subsection
219 A shall pay a report review fee to the Department that covers the Department's cost to review such report,
220 including associated costs for program compliance oversight, as determined by the Department.

221 C. The Department shall review the annual report required under subsection A and (i) evaluate the total
222 costs of the mattress stewardship program, including all expenses and revenues, to determine whether the
223 mattress stewardship assessment meets or exceeds the costs of the program in accordance with subsection G
224 of § 10.1-1425.42 and (ii) determine whether the program is being implemented in accordance with the plan
225 approved under subsection K of § 10.1-1425.42. If the Department determines that the mattress stewardship
226 annual report, including the mattress stewardship assessment, complies with the requirements of subsection
227 A, the Department shall approve the annual report. The producer or representative organization shall make
228 the approved annual report available to the public. If the Department determines that the mattress
229 stewardship annual report, including the mattress stewardship assessment, does not comply with the
230 requirements of subsection A, the producer or representative organization shall submit to the Department a
231 plan on how such producer or representative organization will address the noncompliance in the upcoming
232 year.

233 D. Financial, production, or sales data reported to the Department by a producer or representative
234 organization shall be kept confidential by the Department and shall not be subject to public inspection. The
235 Department may release summary data that does not disclose financial, production, or sales data of a
236 producer, retailer, or representative organization.

237 **§ 10.1-1425.44. Mattress Stewardship Program Advisory Board established; membership; duties and
238 responsibilities; meetings; annual report.**

239 A. There is hereby established the Mattress Stewardship Program Advisory Board, referred to in this
240 section as "the Advisory Board," for the purpose of advising the Department on the proper implementation
241 and sustainability of the mattress stewardship program. The Department shall provide organizational staff
242 support for the Advisory Board.

243 B. The Advisory Board shall have a total membership of nine members. Members of the Advisory Board

244 shall be appointed as follows: the Director of the Department of Environmental Quality, or the Director's
 245 designee; the State Health Commissioner, or the Commissioner's designee; the Secretary of Commerce and
 246 Trade, or the Secretary's designee; and six members appointed by the Governor to include one representative
 247 of mattress retailers; one representative of the mattress manufacturing industry; one mattress recycler; one
 248 representative of an environmental advocacy group; one representative of the Virginia Association of
 249 Counties; and one consumer representative. Members of the Advisory Board shall be citizens of the
 250 Commonwealth.

251 C. Advisory Board members shall serve a term of four years with a maximum of two consecutive terms.
 252 The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in
 253 determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the
 254 original appointments. All members may be reappointed.

255 D. The Advisory Board shall have the following duties and responsibilities:

256 1. Review and evaluate the structure, financing, and other aspects of the mattress stewardship program;

257 2. Review and evaluate each mattress stewardship program plan submitted pursuant to § 10.1-1425.42
 258 before such plan is submitted to the Department for approval;

259 3. Consult with and advise producers or representative organizations as they prepare the mattress
 260 stewardship program plan;

261 4. Receive and review the mattress stewardship program plans submitted pursuant to § 10.1-1425.42 and
 262 make recommendations to the Department regarding mattress stewardship program plan approval;

263 5. Receive and review annual reports submitted pursuant to § 10.1-1425.43 and make recommendations
 264 to the Department regarding the need for any plan amendments or other requirements based on the Advisory
 265 Board's review of such reports; and

266 6. Review and comment on draft regulations relevant to the implementation of the mattress stewardship
 267 program.

268 E. The Advisory Board shall (i) meet at least quarterly until the initial mattress stewardship program
 269 plans have been approved, and semiannually thereafter, and (ii) report annually by December 1 any findings
 270 and recommendations to the General Assembly and the Governor. The meetings of the Advisory Board shall
 271 be held at the call of the chairman or whenever the majority of the members so request.

272 F. The Advisory Board shall elect a chair and vice-chair from among its membership by a simple majority
 273 vote. A majority of the members shall constitute a quorum.

274 G. The Advisory Board may adopt bylaws for the operation of the Advisory Board's business in
 275 accordance with this article.

276 **§ 10.1-1425.45. Powers and duties of the Department.**

277 A. The Department may cooperate with departments, agencies, and other equivalent bodies in other states
 278 in order to further the objectives of this article.

279 B. The Department shall require producers or representative organizations to translate all educational
 280 materials into the languages spoken by local populations and to ensure that collection infrastructure is
 281 accessible to residents with disabilities.

282 C. The Department shall make, adopt, promulgate, and enforce such regulations as may be necessary to
 283 carry out the provisions of this article.

284 **§ 10.1-1425.46. Civil penalties for violations of the mattress stewardship program.**

285 A. Any retailer that violates the provisions of this article is subject to a civil penalty not to exceed \$100
 286 per day for each day of violation.

287 B. A producer or representative organization that violates the provisions of this article is subject to a civil
 288 penalty not to exceed \$1,000 per day for each day of violation. A civil penalty imposed on a representative
 289 organization under this subsection creates a joint and several obligation of the representative organization
 290 and each producer registered with the representative organization. No representative organization shall use
 291 any money collected through a mattress stewardship assessment to pay a civil penalty imposed under this
 292 subsection. Such penalty shall be collected by the attorney for the Commonwealth for the locality where the
 293 violation occurred, and the proceeds shall be paid into the state treasury and deposited by the State
 294 Treasurer into the Litter Control and Recycling Fund established pursuant to § 10.1-1422.01.